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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/320,271	05/27/99	WATANABE	H 990559

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EXAMINER

LEE, C

ART UNIT

PAPER NUMBER

2825

DATE MAILED:

09/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/320,271

Applicant(s)

Watanabe et al.

Examiner

Calvin Lee

Group Art Unit
2825



☒ Responsive to communication(s) filed on Aug 6, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-20 is/are pending in the application

Of the above, claim(s) 14-20 is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5 and 7-13 is/are rejected.

☒ Claim(s) 6 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☒ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

DETAILED ACTION***Election***

Applicant's election without traverse of Group I, claims 1-13, filed on August 6, 1999 is acknowledged. Claims 14-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to non-elected invention.

DOUBLE PATENTING
Claim Rejections - ~~35 U.S.C. § 101~~

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 and 7-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,071,807. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Watanabe's 807 teaches a method of modifying an interlayer insulation film provided between interconnections, wherein the insulation film is modified by implanting ions into the insulation film on a substrate, and the subsequent interconnection is formed by damascene technique. Claim 1 of

Watanabe's 807 clearly suggests to introduce impurities into a first insulating film (8) overlying a substrate then to form a conventional first conductive layer (11) in the modified insulating film (see col. 6 line 6 through col. 7 line 22). The method can be repeated to form a multilayer structure having second, third and fourth interconnections, as desired.

Allowable Subject Matter

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

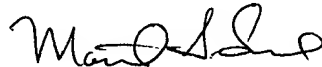
Conclusion

Any inquiry concerning this communication from the Examiner should be directed to Art Unit 2825's Supervisory Patent Examiner *Matthew Smith* whose telephone number is (703) 308-1323. The Examiner is in the Office generally between the hours of 7:00AM to 4:00PM (Eastern Standard Time) Monday through Thursday.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956 or (703) 306-3329. The fax phone number for the Group is (703) 308-7722.

CL

September 25, 2000



MATTHEW SMITH
SUPERVISORY PATENT EXAMINER
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